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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/439,427	11/15/1999	WILLIAM P. APPS	RPC0491	1629
33171	7590	09/30/2008		
REHRIG PACIFIC 4010 E. 26TH STREET LOS ANGELES, CA 90058			EXAMINER CHEN, JOSE V	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 09/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/439,427	<b>Applicant(s)</b> APPS ET AL.	
	<b>Examiner</b> José V. Chen	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 22-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 36 is rejected under 35 U.S.C. 102(b) as being anticipated by Wyler et al. U.S.C. 102(b) as being anticipated by Wyler et al. The patent to Wyler et al teaches structure as claimed including a pallet (10) having at least one deck member (either one of Wyler's reinforcing bars 32 or Wyler's deck 14 and reinforcing bars 32 taken together), the pallet prepared by a method comprising: providing the at least one deck member having a first surface and a second surface (Wyler's reinforcing bar 32 has a top surface 34 and a bottom surface) and mechanically scuffing at least one of the first and second surfaces! of the deck member to define a slip-resistant surface thereon (Wyler's top surface 34 of reinforcing bar 32 is an anti-skid surface 36 formed by roughening or knurling). The only possible distinction between Wyler and claim 36 is the limitation that at least one of the first and second surfaces of the deck member is mechanically scuffed: to define a slip-resistant surface thereon. This limitation is not restricted to mechanically scuffing either the entire upper or lower surface of the deck member (e.g., Wyler's upper surface 20 of deck 14). Instead, this limitation requires only that any surface of a deck member of a pallet be mechanically scuffed to define a slip-resistant surface thereon. Since Wyler's top surface 34 of reinforcing bar 32 of pallet 10

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is roughened or knurled to form an anti-skid surface 36. The method of making limitations do not affect the product itself (i.e., the claimed pallet) and therefore cannot impact patentability to the product. The claims include product-by-process claims. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. It is noted that "scuff" is defined as "to be or become marred or scratched" ("The Random House College Dictionary). The surface of Wyler is defined as knurled or roughened, such provides a marred, scratched and scuffed surface. The patent to Wyler teaches structure as claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 22, 23, 26, 29-31, 34-37, 39-55 rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al ('395) in view of Wyler et al and Fingerson. The patent to Pigott teaches a plastic pallet (fig. 1) having upper and lower decks (12) and a plurality of supports (14) therebetween. The upper and lower decks are separately molded and are attached to each other via the supports. Spaces between the supports define fork-receiving regions. For claims 22, 23, 26, 29-31, 34 and 35-37, Pigott fails to teach that the top surface of the upper deck, the bottom surface of the upper deck (in the fork-receiving regions), and the bottom surface of the lower deck are scuffed to create slip-resistant surfaces. First, Wyler teaches the benefits of having slip-resistant/anti-skid surfaces on the top surface of the upper deck (to inhibit movement of the payload disposed on the pallet; see column 1, lines 64-67), on the bottom surface of the upper deck (to prevent slippage of the pallet when it is being moved; see column 2, lines 45-47), and on the bottom surface of the lower deck (to ensure non-slip contact with a floor or racking structure; see column 2, lines 26-28). Second, Fingerson teaches the concept of roughening/scuffing a surface in order to make it into an anti-skid surface (see column 6, lines 5-8). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the pallet of Pigott by roughening/scuffing the top surface of the upper deck, the bottom surface of the upper deck, and the bottom surface of the lower deck thereof, because of the advantages taught by Wyler. Furthermore, scuffing the pallet surfaces, such as is taught by Fingerson, is an easy and non-

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expensive way to provide anti-skid surfaces on the pallet of Pigott. The method of making limitations do not affect the product itself (i.e., the claimed pallet) and therefore cannot impact patentability to the product. The claims include product-by-process claims. Even though product-by-process claims are limited by and defined by the Process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. The provision of a dull, shiny, finished surface is a matter of desirability and choice since such would perform equally as well. It is noted that "scuff" is defined as "to be or become marred or scratched" ("The Random House College Dictionary). The surface of Wyler and Fingerson is defined as knurled or roughened, such provides a marred, scratched and scuffed surface.

Claims 24, 25, 27, 28, 32, 33 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pigott et al (5,197,395) in view of Wyler et al and Fingerson as applied to claims 22, 23, 26, 29-31, 34 and 35-37 above, and further taken with or without of Sturgis. As stated above, Pigott in view of Wyler and Fingerson teaches the specifications of claims 22, 26, 31 and 36 above, including a pallet with various scuffed surfaces. For claims 24, 25, 27, 28, 32, 33 and 38, Pigott in view of Wyler and Fingerson fails to teach a means for scuffing the surfaces. The method of making limitations do not affect the product itself (i.e., the claimed pallet) and therefore cannot impact patentability to the product. The claims include product-by-process claims. Even

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though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. However, although such carries no weight in a utility claim, the patent to Sturgis teach a cup-shaped abrading brush with wire tufts (see Fig. 1). This type of brush would be more than capable of scuffing the plastic surfaces of a pallet, as desired/needed, and therefore, it would have been obvious to use such a brush to scuff the surfaces of the pallet of Pigott in view of Wyler and Fingerson. It is noted that "scuff" is defined as "to be or become marred or scratched" ("The Random House College Dictionary). The surface of Wyler and Fingerson is defined as knurled or roughened, such provides a marred, scratched and scuffed surface.

### ***Response to Arguments***

Applicant's arguments filed 06/30/08 have been fully considered but they are not persuasive. See above rejections. It is repeated, the applicant has provided an affidavit filed under 37 CFR 1.132. The declaration under 37 CFR 1.132 filed 01/03/05 is insufficient to overcome the rejection of the claims based upon 35 USC 102b rejection under the patent to Wyler et al as set forth in the last Office action because it fails to set forth facts that are germane to the rejection at issue, the showing is not commensurate in scope with the claims. Applicant in the declaration has made conclusions and assumptions that are based on opinion.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to José V. Chen whose telephone number is (571)272-6865. The examiner can normally be reached on m-f,m-th 5:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571)272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

José V. Chen  
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09/17/08